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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/768,939	01/23/2001	Bronwyn C. Rice	RIE600	9740

7590 02/15/2005

Ingrid McTaggart
534 S. E. 58TH AVENUE
PORTLAND, OR 97215-1824

EXAMINER

GRAYSAY, TAMARA L

ART UNIT	PAPER NUMBER
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3623

DATE MAILED: 02/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/768,939

Applicant(s)

RICE, BRONWYN C.

Examiner

Tamara L. Graysay

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--- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 December 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 8-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 8-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 December 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Applicant, having cancelled all claims drawn to the method of using the communication system, is now limiting the claims to a communication system or apparatus alone. Upon reconsideration of claims 8-13, new grounds of rejection under 35 U.S.C. 112, second paragraph, 35 U.S.C. 101, and 35 U.S.C. 103 follow. As a result, this action will not be made final.

Drawings

2. The drawings were received on 22 December 2004. These drawings are acceptable.

Specification

3. Applicant has cancelled all of the method claims. Therefore, the title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 8-11 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01. The omitted structural cooperative relationships include an interconnection of the database with the structural elements of a computer that allows the functionality of the computer software to be performed by the computer.

NOTE: The claims are referred to in general terms without reference to the nonfunctional descriptive material, i.e., the particular information that is contained within the database, which is discussed in the rejection under 35 U.S.C. 101, below.

a. Regarding claims 8 and 11, the claimed subject matter of system claim 8 includes two databases and a communication apparatus. The communication apparatus could be interpreted to include computer structure that enables communication between the databases, i.e., a computer and computer connections that are adapted to allow a first user that inputs first information into a first database access to a second database that contains second information input by a second user, and conversely, a second user that inputs second information into the second database access to the first database. However, the scope of the term “communication apparatus” is indefinite, as evidenced by dependent claim 11 which recites the “communication apparatus includes” a third database containing third information. Since a database is not a communication apparatus or structure, i.e., a database cannot interconnect a database with a user such that it would allow a first user to access a second database and a second user access to a first database, the scope of claims 8 and 11 is unclear. Without structural cooperative relationships that include an interconnection of the database with positively recited structural elements of a computer that allow the claimed functionality of the computer software to be performed by the computer, claims 8 and 11 are indefinite. Moreover, due to the indefiniteness of the claimed communication apparatus, the recited “communication system” at line 1, is not commensurate with the structure that is positively recited in the body of claims 8 and 11. Thus,

claims 8 and 11 are rendered indefinite and unclear as to the scope of each claim and as to the metes and bounds of patent protection being sought.

b. Similarly, regarding claim 9, the recitation of software connected to the second database does not overcome the indefiniteness of claim 8 as noted above. Dependent claim 9 recites the “communication apparatus includes” scheduling software connected to the database and facilitating a first user in scheduling [an appointment] with the second user. Software is written information that provides instruction for a computer, or a set of computer programs concerned with the operation of a data processing system (e.g., compilers, routines, manuals, and circuit diagrams) not a structural element like hardware, a network, or the Internet. Software is not a communication apparatus or structure that would interconnect a database with a user such that the software would facilitate scheduling [an appointment] and allow a first user to access a second database and a second user access to a first database. Without structural cooperative relationships that include an interconnection of the database with positively recited structural elements of a computer that allow the functionality of the computer software to be performed by the computer, claim 9 is also indefinite. As a result, the recited “communication system” at line 1, is not commensurate with the structure that is positively recited in the body of claim 9. Thus, claim 9 is rendered indefinite and unclear as to the scope of the claim and as to the metes and bounds of patent protection being sought.

c. Similarly, regarding claim 10, the recitation of the first database and second database accessible via a web site does not overcome the indefiniteness of

claim 8. Dependent claim 10 recites the “communication apparatus includes” the first and second databases accessible on a web site. A web site is a collection of web pages, not a structural element like hardware, a network, or the Internet. A web site is not a communication apparatus or structure that would permit accessibility of the first and second databases and allow a first user to access the second database and a second user access to the first database. Without structural cooperative relationships that include an interconnection of the database with positively recited structural elements of a computer that allow the functionality of the computer software to be performed by the computer, claim 10 is indefinite. As a result, the recited “communication system” at line 1, is not commensurate with the structure that is positively recited in the body of claim 10. Thus, claim 10 is rendered indefinite and unclear as to the scope of the claim and as to the metes and bounds of patent protection being sought.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

5. Claims 8-11 are rejected under 35 U.S.C. 101 because the claimed invention is directed to nonstatutory subject matter, due to the indefiniteness of the claims as noted in the above rejection under 35 U.S.C. 112, second paragraph.

Claims 8-11 recite information stored in a database. The structure of the “communication system” is not positively recited in the body of the claims, thus limiting the claims to the information contained within the database. The first user information

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(dietary preferences) and second user information (type of ethnic cuisine) are merely contained or stored within the database and capable of being accessed by the users, without recitation of the structure that permits access. The particular information stored within the database does not impart functionality to either the information as claimed or to a computer. As such, the claimed invention recites nonfunctional descriptive material *per se*, i.e., mere data. The recited nonfunctional descriptive material *per se* is merely carried on some medium it is not structurally and functionally interrelated to the medium. Thus, claims 8-11 are directed to nonstatutory subject matter.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 8-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Starkey (US-6745200).

NOTE: The recitation of nonfunctional descriptive material, which is directed to the content of information, not structure or an action or step, does not render nonobvious that which is otherwise obvious.

a. Regarding claims 8, 10, and 12, Starkey discloses a communication system having several databases (modules). The first client database (resident component of People Module 205, e.g., C.5, L.15-20) includes information related to a first client user (resident) including dietary preferences (preferences of the residents and exhaustive definition of the personal needs and desires of the residents, e.g.,

C.9, L.19-35; resident's medical needs, C.9, L.30); a second chef database (staff component of People Module 205, e.g., C.5, L.20-27) including information about the cook (style of cooking, C.9, L.39-60); and, a communication apparatus (a computer system architecture including a local area network or wide area network, e.g., C.3, L.16 – C.4, L.55) that allows the users to access the information contained within the databases. The claims do not define over the Starkey disclosure that is for a first client user and a second chef user being at the same location (estate household, e.g., C.2, L.38-48; C.5, L.1).

Starkey is not specific as to the information that is entered into the second chef database (staff component of the People Module 205) as it relates to the chef or cooking staff.

However, Starkey does read that the Standards Module 206 includes cooking style (C.9, L.39-60). The fact that a cooking style can be selected for a particular planned event would teach that a specific cooking style would be available to the user who is planning the event.

Therefore, it would have been obvious to modify the chef (staff) information of Starkey to include the particular training and cooking style of the cooking staff or chef in order to accommodate a particular preference of cooking style that is preferred by a client or resident, or required for a particular event that is planned.

b. Regarding claim 9, the Starkey communication system includes scheduling software (Events Module 204).

- c. Regarding claim 11, Starkey discloses a Guest Visit Example (C.11, L.16-54) in order to demonstrate an Event 204 (which includes a series of activities). The activities are subdivided into components that are planned by cross-correlation of the information contained in the various databases (Modules). The food element of an event is described as having an impact on a cook and purchaser, for example. Also, regarding claim 11, the personal preferences and food type are cross-correlated with an inventory database (the supplies on hand) for example. Further, regarding claim 11, Starkey discloses that the communication system includes an inventory database (Household Inventory Module 202, e.g., C.5, L.42) that includes the contents (C.8, L.47-57) at the estate.
- d. Regarding claim 13, Starkey discloses a modem 154, which infers use of a telephone for accessing the network on which the communication system operates.

Response to Arguments

7. Applicant's arguments with respect to claims 8-13 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.
- Shapiro (US-6714944) teaches a potential client accessing records for a registered chef.
 - Schloss (US-5706507) teaches a communication system that matches and employee with a job based on the employee's skills and the job requirements.


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- Alexander (article, Recipe for culinary career) teaches a personal chef business.
- Smith (article, The chef connection) teaches a personal chef business.
- Shanahan (article, Toaster scrambles, incredibles, inedibles) teaches personal chef businesses.
- Ratcliffe (article, Granite city cook tries new recipe for own success) teaches personal chef business.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tamara L. Graysay whose telephone number is (703) 305-1918. The examiner can normally be reached on Tue - Fri from 8:30am to 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz, can be reached on (703) 305-9643. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Tamara L. Graysay
Examiner
Art Unit 3623

02082005